

### REMARKS

In the present application claims 1-11, 13-28, 30-34, 36-46, and 48-57 remain pending.

Claims 1, 18, 36 and 56 are independent.

The Office Action dated December 27, 2006 rejected claims 1-11, 13-16, 18-28, 30-33, 36-46 and 48-51, 53-56 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,643,671 to Milillo et al ("Milillo"), in view of U.S. Patent No. 6,253,295 to Beal et al. ("Beal"). Claims 17, 34 and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Milillo in view of Beal and further in view of U.S. Patent No. 5,504,861 to Crockett et al. ("Crockett"). While the Office Action acknowledges that claim 57 is pending, it does not address that claim. Applicant respectfully requests that the Examiner consider that claim and provide its status.

With respect to the section 103(a) rejections, applicant respectfully traverses. According to MPEP §2142, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The Office Action fails to establish the three basic criteria.

For example, contrary to the Office Action, neither Milillo nor Beal, whether taken alone or in combination, discloses every element claimed in independent claims of the present application. For instance, Milillo does not disclose or suggest at least "performing a first point in time virtual copy of the modified data of the first volume to a second volume at the primary site" recited in independent claims 1, 18, 36 and 56. The Office Action cites Milillo's column 4, lines 47-60 and column 8, lines 42-60 as allegedly disclosing that element. The Office Action misinterprets Milillo. Those passages of Milillo disclose that its primary target volume receives a copy of the initial data


file and a copy of the write command record from the source volume. Thus, Milillo appears to be suggesting a physical copy from primary source volume to the primary target volume. Physically copying the initial data file is different from "performing a first point in time virtual copy."

Milillo also fails to disclose or suggest, "destaging modified data to a first volume at the primary site for a current database update." Rather, the above passages of Milillo suggest that Milillo destages modified data to its primary target volume. With respect to Beal, while Beal discloses enabling pair-pair remote copy, Beal does not disclose or suggest those elements that Milillo lacks. For at least the foregoing reasons, applicant believes that the Office Action has failed to properly advance a prima facie case of obviousness, and therefore, independent claims 1, 18, 36 and 56 and their dependent claims by virtue of dependency are not obvious over Milillo and Beal.

With respect to the rejection of claims 17, 34 and 52 under 35 U.S.C. §103(a) over Milillo in view of Beal and further in view Crockett, because Crockett does not disclose or suggest what Milillo and Beal fail to disclose or suggest as discussed above, those claims are also not obvious for at least the same foregoing reasons.

In view of the foregoing, applicants respectfully requests reconsideration, withdrawal of all rejections, and allowance of all pending claims in due course.

Respectfully submitted,

  
Eunhee Park  
Registration No. 42,976

SCULLY, SCOTT, MURPHY & PRESSER, P.C  
400 Garden City Plaza -Suite 300  
Garden City, New York 11530  
(516) 742-4343

SF:EP:me